operates, although its period is extended by the saving clause in their favor. See *Bunce* v. *Wolcott*, 2 Conn. 27, 33; *Herff* v. *Griggs*, 121 Ind. 471, 476, 23 N. E. 279, 281. For disabilities acquired after disseisin are ineffectual. *Kelley* v. *Gallup*, 67 Minn. 169, 69 N. W. 812. *Cf. McDonald* v. *Hovey*, 110 U. S. 619, 4 Sup. Ct. 142. And the heir, though disabled, takes subject to the time run against the ancestor, disabled or not. *Pim* v. *City of St. Louis*, 122 Mo. 654, 27 S. W. 525; *Davis* v. *Coblens*, 174 U. S. 719, 19 Sup. Ct. 832. It is generally held that possession, unimpeachable when the statute bars entry and action, is title. *Inhabitants of School District* v. *Benson*, 31 Me. 381; *Sharon* v. *Tucker*, 144 U. S. 533, 12 Sup. Ct. 720. But an infant, even after the period for an adult has run, retains a right of action, and until this is barred, the disseisor under the usual statute would have no lawful title. Consequently, his abandonment would necessitate the running of the statute *de novo*. *Overand* v. *Menczer*, 83 Tex. 122, 18 S. W. 301; *Old South Society* v. *Wainwright*, 156 Mass. 115, 30 N. E. 476. The statute here, however, expressly gave the disseisor title after seven years. SHANNON, CODE OF TENN., 1896, § 4456. This may be construed to operate against disabled parties. *Schauble* v. *Schulz*, 137 Fed. 389. *Cf. Jones* v. *Lemon*, 26 W. Va. 629, 635. The decision reconciles this with the provision for infants by letting title pass, subject to be defeated by action within three years after majority. Then abandonment after seven years is immaterial.

MALICIOUS PROSECUTION — PROBABLE CAUSE — ACQUITTAL OF PLAINTIFF AS EVIDENCE. — In an action for malicious prosecution the court refused to charge that if the plaintiff was tried and acquitted this lifted from him the burden of showing want of probable cause. *Held*, that this charge should have been given. *Hanchey* v. *Brunson*, 56 So. 971 (Ala.).

Lack of probable cause is an essential part of the plaintiff's case in malicious prosecution. *Abrath* v. *North Eastern Ry. Co.*, 11 Q. B. D. 440. Since it is the duty of an examining magistrate to hold an accused for trial if there appears to be probable cause for the prosecution, many courts hold that the discharge of the plaintiff by a magistrate is *primâ facie* evidence of want of probable cause. *Barhight* v. *Tammany*, 158 Pa. St. 545, 28 Atl. 135; *Vinal* v. *Core*, 18 W. Va. 1, 42, 69, 70. Other courts hold that such a discharge has no bearing on the question of probable cause. *Israel* v. *Brooks*, 23 Ill. 575; *Davis* v. *McMillan*, 142 Mich. 391, 105 N. W. 862. However this may be, an acquittal shows merely that the accused was not believed, beyond a reasonable doubt, to be guilty, and has no logical bearing whatever on the question whether the defendant, at an earlier time, had reasonable grounds for prosecuting him. It is therefore almost universally held that an acquittal is no evidence — certainly not *primâ facie* evidence — of want of probable cause. *Boeger* v. *Langenberg*, 97 Mo. 390, 11 S. W. 223; *Cullen* v. *Hanisch*, 114 Wis. 24, 89 N. W. 900. The contrary decisions are almost negligible. *Whitwell* v. *Westbrook*, 40 Miss. 311. See *Lunsford* v. *Dietrich*, 93 Ala. 565, 570, 9 So. 308, 310. The burden which the doctrine of the principal case lays upon prosecutors is likely unduly to discourage prosecutions.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — NEGLIGENT MAINTENANCE OF LAND CONDEMNED FOR PARK AFTER STATUTE AUTHORIZING SALE. — A statute authorized the sale of land acquired by a city for a public park. Before it was sold, the plaintiff was injured upon the land, and sued the city for negligence. *Held*, that the city is not liable. *Durkin* v. *City of New York*, 146 N. Y. App. Div. 472, 131 N. Y. Supp. 275.

The authorities are in conflict regarding the liability of municipalities for negligence in maintaining public parks. *Clark* v. *Inhabitants of Waltham*, 128 Mass. 567; *City of Denver* v. *Spencer*, 34 Colo. 270, 82 Pac. 590. The difficulty

is in classifying properly the public and private functions of a municipal corporation. See *Esberg Cigar Co.* v. *City of Portland*, 34 Or. 282, 288, 55 Pac. 961, 962. The court in the principal case, assuming that a city generally is responsible for unsafe conditions in parks, reasons that the statute, in authorizing a sale, dissolved the public trust, and thereafter the city had the liabilities of a private landowner. It is submitted that the liability of a city depends, not upon the purposes for which land is acquired, but upon its actual use. Thus where land is purchased for future public use, before it is devoted to that purpose, the city has only the private owner's liability. *Birch* v. *City of New York*, 190 N. Y. 397, 83 N. E. 51; *Barthold* v. *City of Philadelphia*, 154 Pa. St. 109. So if the land in the principal case was never used for a park, the city never got beyond the private landowner's responsibility, and the reasoning is inapplicable. If the land was used for park purposes, and continued to be so used to the time of the injury in question, it is difficult to see how a statute giving a power of sale would change the extent of liability.

MUNICIPAL CORPORATIONS — POLICE POWER AND REGULATIONS — ACTS PROHIBITED BY BOTH STATUTE AND ORDINANCE. — By its charter a city was given authority to make ordinances to regulate the sale of food. An ordinance was passed imposing fines for the sale of adulterated food. A state law was then passed, imposing a larger penalty for the same act. Subsequently a law reaffirmed the city's original power. *Held*, that the city can recover a fine under the ordinance for the sale of adulterated food. *City of Chicago* v. *Union Ice Cream Mfg. Co.*, 96 N. E. 872 (Ill.).

Originally municipal ordinances did not extend to criminal matters, and the penalty for violation was recoverable in an action of debt. See 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., §§ 634, 635. A municipality may now if authorized further penalize what is already a criminal act. *People* v. *Hanrahan*, 75 Mich. 611, 42 N. W. 1124. As to its power to do so, when not express, decisions are in chaotic conflict. *Matter of Sic*, 73 Cal. 142, 14 Pac. 405; *City of Seattle* v. *MacDonald*, 47 Wash. 298, 91 Pac. 952. The customary test of a municipal ordinance is reasonable necessity. *State, Cape May, etc. R. Co.* v. *City of Cape May*, 59 N. J. L. 404, 36 Atl. 696. If the state has already taken care of a matter, this may well raise a presumption against the reasonableness of the city's act. *Cf.* 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., §§ 632, 633; 2 MCQUILLIN, MUNICIPAL CORPORATIONS, §§ 876, 877. When the proceeding is in the form of a complaint in the name of the city, and not an action of debt, it still is not a criminal action and the constitutional guaranties as to criminal trials do not apply. *State* v. *Muir*, 164 Mo. 610, 65 S. W. 285; *Williams* v. *City Council of Augusta*, 4 Ga. 509. *Contra*, *State ex rel. Hamilton* v. *Municipal Court of Milwaukee*, 89 Wis. 358, 61 N. W. 1100. But if the action is in the name of the state and the penalty is imposed for the purpose of punishment, it is criminal. *State* v. *Kernan*, 57 Conn. 286. See 15 HARV. L. REV. 660. The ordinance must of course never be inconsistent with the state law. *Horn* v. *Chicago & N. W. Ry. Co.*, 38 Wis. 463. Imposing a smaller penalty does not make it inconsistent. *City of New Orleans* v. *Collins*, 52 La. Ann. 973, 27 So. 532.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — TELEPHONE CONNECTIONS WITH OTHER LINES. — The plaintiff telephone company sued to compel the defendant telephone company to make an electrical connection between the two systems. By an operating agreement, the defendant company had made such connection with another telephone company. *Held*, that the bill should be dismissed. *Home Tel. Co.* v. *People's Tel. & Tel. Co.*, 141 S. W. 845 (Tenn.).

For a discussion of the principles involved, see 23 HARV. L. REV. 54.